

Message Text

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ORIGIN EB-11

INFO OCT-01 EA-11 ISO-00 L-03 CAB-09 CIAE-00 COME-00

DODE-00 DOTE-00 INR-11 NSAE-00 RSC-01 FAA-00 SSO-00

INRE-00 NSCE-00 SS-20 NSC-07 USIE-00 PRS-01 PA-04

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FM SECSTATE WASHDC

TO AMEMBASSY MANILA NIACT IMMEDIATE

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E.O. 11652: N/A

TAGS: EAIR, RP

SUBJECT: CIVAIR - BILATERAL NEGOTIATIONS

REF: MANILA 9332, STATE 170102 AND 170737

1. IN VIEW OF CONCERNS EXPRESSED BY EMBASSY IN REFTEL
PERHAPS IT IS TIME TO BACK OFF FROM TREES AND CONSIDER THE
ESSENTIAL AMERICAN INTERESTS AND WHERE WE GO FROM HERE.
WE HAVE AGREEMENT ON MAJOR PART OF ISSUES THAT HAVE BEEN
UNDER NEGOTIATION, INVOLVING WIDE BODY AIRCRAFT,
PASSENGER SERVICES, AND ROUTE EXTENSION. REMAINING
PROBLEMS FOCUS ENTIRELY ON CARGO SERVICES.

2. DEPARTMENT APPRECIATES DIFFICULTIES EMBASSY IS
ENCOUNTERING IN THIS FIELD. USG BASIC PREOCCUPATION AS
EMBASSY IS AWARE, IS TO AVOID ENTERING INTO ANY ARRANGE-
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MENT WHICH WOULD PLACE EXISTING US ALL CARGO SERVICES,

INCLUDING FLYING TIGERS, AT RISK. WE CLEARLY RECOGNIZE THE UNUSUAL CIRCUMSTANCES OF THE GOP APPROVAL OF THE FT PERMIT AND THE RELATIONSHIP OF THOSE CIRCUMSTANCES TO

THE CURRENT GOP (AND MOST PARTICULARLY PAL) POSITION, BUT IT SIMPLY IS NOT POSSIBLE FOR THE USG TO REFRAIN

FROM FULLY PROTECTING THE INTERESTS OF A DULY CERTIFIED CARRIER WHOSE LEGAL RIGHTS UNDER US LAW IN THE PHILIPPINE

MARKET ARE NO LESS THAN THOSE OF OTHER US CARRIERS. NEED FOR SUCH PROTECTION ACCENTUATED BY GOP NOTE OF JULY 27 CITING POSSIBLE CANCELLATION FTL PERMIT.

3. IN THE NEGOTIATIONS FOR THE INTERIM AGREEMENT WE HAVE SOUGHT OPTIMALLY AN EXPLICIT UNDERSTANDING FROM THE GOP WHICH WOULD PROTECT EXISTING US ALL CARGO SERVICES AT LEAST UNTIL ALTERNATIVE ARRANGEMENTS WERE AGREED. ON EMBASSY ADVICE THAT THIS WAS NOT NEGOTIABLE, WE HAVE ATTEMPTED TO FIND A FORMULA WHICH WOULD AT LEAST PROVIDE A LEGAL BASIS FOR RESPONSIVE ACTION UNDER PART 213 SHOULD THE GOP UNILATERALLY DECIDE TO ELIMINATE OR REDUCE US ALL CARGO SERVICES. WE HAVE PROVIDED THE EMBASSY WITH THOSE OPTIONS IN STATE 158653 BY WHICH THIS COULD BE ACCOMPLISHED. PRESUMABLY THE OPTION SELECTED REPRESENTED GOP CHOICE BUT THE MODIFICATION PROPOSED BY GOP WOULD SIMPLY NOT PROVIDE US WITH THE FOUNDATION WE NEED. PURPOSE OF AIDE MEMOIRE IS NOT TO GIVE USG VETO OVER PHIL CAB ACTIONS, BUT TO PROVIDE LEGAL BASIS REQUIRED TO PRESERVE OPTION ON PART OF USG TO INVOKE

PART 213 SANCTIONS IF THAT BECAME NECESSARY. PART 213 NOT AVAILABLE UNLESS THERE IS, VIOLATION OF AGREEMENT. BASIS FOR POSSIBLE 213 ACTION, HOWEVER, WEAKENED DURING

THE PAST FORTNIGHT WITH CHANGES OF WORDING OF PROPOSED EXCHANGE OF NOTES, ELIMINATING REFERENCES TO RECIPROCITY, AND SUBSTITUTING "SYMPATHETIC" FOR "FAVORABLE". EFFORTS TO SHORE UP THIS WEAKENED LANGUAGE BY OUR PROPOSED AIDE MEMOIRE UNACCEPTABLY NEUTRALIZED BY EMBASSY'S LIMITED OFFICIAL USE

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PROPOSED REVISION. ACCORDINGLY, NECESSARY TO HAVE BEST ALTERNATIVE SUPPORT POSSIBLE, I.E., PROPOSED AIDE MEMOIRE, WHICH WE ASSUME IN FACT REPRESENTS FAIR STATEMENT OF INTENT OF PARTIES. HOWEVER, IF EMBASSY BELIEVES THERE IS MAJOR DIFFICULTY IN PUTTING AIDE MEMOIRE TO GOP AS ORIGINALLY DRAFTED, WE ARE PREPARED ACCEPT EITHER OF FOLLOWING ALTERNATIVES:

A. DROPPING AIDE MEMOIRE AND FINAL SENTENCE OF THE PARAGRAPH DEALING WITH ALL CARGO SERVICES REGARDING "SYMPATHETIC CONSIDERATION" IN THE BODY OF THE NOTE AND SUBSTITUTE A NEW SENTENCE WHICH WOULD READ "THIS OPTION, AND ANY SERVICES INAUGURATED UPON EXERCISE THEREOF, AS WELL AS EXISTING US ALL CARGO SERVICES, WILL BE CONTINUED PENDING COMPLETION OF THE NEGOTIATIONS MENTIONED BELOW."

B. REVISING THE FIRST PARAGRAPH OF THE AIDE MEMOIRE TO READ AS FOLLOWS:

"IN CONNECTION WITH THE EXCHANGE OF NOTES CONCLUDED THIS DATE COVERING INTERIM ARRANGEMENTS FOR AIR TRANSPORT SERVICES, IT IS THE UNDERSTANDING OF THE US GOVERNMENT THAT THE INTENT OF THIS EXCHANGE OF NOTES IS INTER ALIA TO INSURE THAT ALL CARGO SERVICES CURRENTLY OPERATED BY UNITED STATES CARRIERS AND TO BE OPERATED BY PHILIPPINE CARRIERS ON AUTHORIZED ROUTES SHALL CONTINUE PENDING COMPLETION OF NEGOTIATIONS BETWEEN THE TWO GOVERNMENTS IN THE TALKS WHICH THEY HAVE AGREED WILL COMMENCE WITHIN NINETY DAYS OF TODAY'S DATE."

4. EMBASSY IS INSTRUCTED TO PROPOSE THE AIDE MEMOIRE LANGUAGE TRANSMITTED IN STATE 170102 OR ONE OF

THESE ALTERNATIVES WITH THE GOP AND TO REPORT GOP REACTIONS. IF NOT ALREADY CORRECTED, DATE SHOWN AS APRIL 1, 1974 IN DRAFT (MANILA 8948) SHOULD READ APRIL 1, 1975. KISSINGER

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